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McGUINNESS & MANARAS LLP
125 NAGOG PARK
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OFFICE OF PETITIONS

In re Application of :
Backes et al. :
Application No.: 10/781476 : DECISION ON
Filing or 371(c) Date: 02/18/2004 : PETITION
Attorney Docket Number: 160-045 :

This is a decision in response to the Renewed Petition to Withdraw Holding of Abandonment Pursuant to 37 CFR 1.181(a) filed October 17, 2006. The delay in treating this petition is regretted.

This Petition is hereby **dismissed**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the non-final office action, mailed November 2, 2005. The Office action set a three (3) month period for reply. Extensions of time were available under 37 CFR 1.136(a). No reply having been received, the application became abandoned on February 23, 2006. A Notice of Abandonment was mailed June 6, 2006.

June 12, 2006 Petition

Applicant filed a petition to withdraw the holding of abandonment on June 12, 2006, wherein Applicant asserted that a timely response to the Office action was filed via facsimile on February 1, 2006. Applicant asserted that the Transmittal Letter and facsimile coversheet correctly listed the serial number as 09/781,476. In support of the assertion, Applicant included a copy of an Auto-Reply Facsimile Transmission from this Office indicating receipt by this Office of 11 pages of papers for application serial number 09/781,476 on February 1, 2006.

October 6, 2006 Decision dismissing the June 12, 2006 petition

The petition was dismissed in a Decision mailed October 6, 2006. Applicant was informed that the above-identified application number is 10/781,476, and not 09/781,476. Applicant was also informed that a review of the Auto-Reply Facsimile Transmission also revealed that the form did

not include the filing date of the application, or other indicia, i.e., the inventor; Art Unit or Examiner, that would allow this Office to quickly identify the correct application number.

Applicant was directed to 37 CFR 1.5, which mandates that all correspondence filed with this Office include the application serial number. Applicant was also required to provide a copy of the putatively-filed reply.

The present renewed petition

Applicant files the present renewed petition and asserts that, of the fax coversheet, Amendment and Transmittal letter, the one form that contained the correct serial number was the Transmittal. Applicant files copies of the Transmittal letter, Auto-Reply Facsimile Transmission and Amendment.

A review of the copy of the amendment filed with the renewed petition reveals that the amendment identifies application serial number 10/781,361. A review of the contents of application serial number 10/781,361 ((for which Applicant's herein are also listed as the attorney(s) of record)), reveals that the amendment was filed in application serial number 10/781,361. A review of the Transmittal Form received on February 1, 2006 in application serial number 10/781,361, reveals that it listed application serial number 10/781,361 thereon. A further review of the application papers filed in application no. 10/781,361 on February 1, 2006 reveals that Applicant apparently filed amendments for both application 10/781,361 and the present application, no. 10/781,476 on February 1, 2006, but failed to correctly identify the amendment for the present application, no. 10/781,476.

A review of the two (2) sets of amended specification reveals that they are similar; however, a review of the two (2) sets of claims reveals that one set was two (2) pages and the other set was three (3) pages; however, both sets identified the application as 10/781,361. This mixing of application papers, coupled with the mis-identification of the application papers, inhibited this office from being able to quickly discover applicant's error and make the requisite correction. "A minor error in the identification of the application can be corrected by the Office provided the correct identification can be quickly discovered." MPEP 502.

Analysis and conclusion

Applicant has failed to demonstrate that the error in correctly identifying the application papers was a minor error. Applicant has also failed to demonstrate compliance with 37 CFR 1.5 in filing the amendment and fax coversheet. The petition is properly dismissed.

After a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director. Therefore, it is extremely important that petitioner supply **any** and **all** relevant information and documentation with his request for reconsideration. The Director's decision will be based solely on the administrative record in existence.

Applicant is again urged to file a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark

fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an “unintentionally” abandoned application without a showing that the delay in was “unavoidable.” An “unintentional” petition under 37 CFR 1.137(b) must be accompanied by the required fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revive under 37 CFR 1.137(b).


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.


Derek L. Woods
Attorney
Office of Petitions